Cri A 1856/96

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

CF0000061092

APPEAL OF PRISONER

Division Bench (Criminal)

No. 1373/94 Name [illegible]

Father's name [illegible]

Residence [illegible] Age 50 वर्ष

Sentenced to आजीवन कारावास On २८/१०/९५

Under section ३०२ भा.दं.वि. by अपर सत्र न्यायाधीश सरगुजा (म.प्र.)

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ... २८/१०/९५

2 Date on which copy received ... आपूर्ति

3 Date on which Appeal sent ... १०/१/९६

4 Whether the prisoner wishes to be represented or ~~not~~ – Yes / No

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No. 1373/94 Name [illegible]

Confined in [illegible] Jail अम्बिकापुर (म.प्र.)

No. 823/Cell/ Dated 19/X/95

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ अति. मु. न्या. अम्बिकापुर (म.प्र.)

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

Superintendent
केन्द्रीय जेल Jail रायपुर. (म.प्र.)

Date of receipt in ... office 28/10/94 to 19-10-95

Date of receipt record to accompany the 296 days Time Barred

Memo of Appeal to the Appellate court ...

No ... Dated ... 199...

Forwarded to the ...

High Court of Madhya Pradesh
JABALPUR
31 OCT 1995
Reg. No. 9092
Recept Clerk
High Court, Jabalpur

Date of receipt in Appellate Court ...

(P. T. O.)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक G.A.1856/96 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

7-3-2006

Mr. J.A. Lohani, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Ravindra Agrawal, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J:-

The accused/appellant has preferred this criminal appeal under Section 374 (2) of the Code of Criminal Procedure, questioning legality & correctness of the judgment of conviction and order of sentence dated 28-10-1994 passed by the Additional Sessions Judge, Surajpur, in Sessions Trial No.201/90, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life.

The case of the prosecution is that Mansai (PW-1) has lodged the First Information Report (Ex.P-1) in Police Station: Ramkola on 3-7-1990 to the effect that accused Dharampal has murdered Singaro Bai at about 4.30 p.m. by attacking her with an axe. On receiving this report, the Station House Officer, Police Station: Ramkola, registered Crime No.43/90 under Section 302 of the I.P.C. and proceeded to the scene of occurrence. After giving notice to the Panchas, the Panchnama (Ex.P-7) of the dead body of Singaro Bai was prepared.

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आदेश पत्रक

मामला क्रमांक G.A. 1856/96 सन् ~~200~~

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

While in police custody, the accused gave memorandum (Ex.P-2) regarding the place where he kept the axe, weapon of offence, and in pursuance of that, the axe was got recovered under Ex.P-3. Baniyan of the accused stained with blood was taken into possession under Ex.P-4. Plain soil and blood stained soil were taken into possession form the place of occurrence under Ex.P-5. The site plan (Ex.P-8) was prepared by the Patwari. The body of the deceased was sent for post-mortem examination to Community Health Centre, Wadrafnagar, under Ex.P-9 where Dr. Arvind Kumar Bhatt (PW-15) conducted post-mortem on the body of Singaro Bai and prepared the post-mortem report (Ex.P-13).

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Surajpur, who in turn committed the case to the Sessions Judge, Surguja, from where learned Additional Sessions Judge, Surajpur, received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined 15 witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence and stated that he has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the arguments of respective counsel, convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard Mr. J.A. Lohani, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. Ravindra Agrawal, learned Panel Lawyer on behalf of the State/respondent.

The homicidal death of Singaro Bai is not in dispute.

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मामला क्रमांक G.A.1856/96 सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

As far as involvement of the accused in the crime in question is concerned, the incident was witnessed by Ram Vriksha (PW-2), who has stated in his evidence that at the time of incident he was working on the roof of his house and he saw that the accused assaulted the deceased with axe and ran away. Thereafter, he came down from the roof of his house and went to the place where Singaro Bai's body was lying and saw that she was already dead.

The accused made extra judicial confession before Son Kunwar (PW-3), who has stated in her evidence that the accused after committing the murder of her mother, came to her and said that he has murdered Singaro Bai because she used to practice witchcraft. On hearing this, she went near the body of her mother and saw that she was already dead.

Jaan Sai (PW-4) has stated in his evidence that a Panchayat was convened on account of dispute between the deceased and the accused, as the accused used to call Singaro Bai as witch and on which both were advised not to quarrel.

Therefore, in view of the above evidence, it is established that the accused used to call Singaro Bai as witch, there was dispute between the two and on account of that, Panchayat was also convened in which both were advised not to quarrel.

The accused made extra judicial confession before Son Kunwar (PW-3). In cross-examination of this witness, defence has not been able to elicit any circumstance in order to make the evidence of this witness unreliable or untrustworthy.

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आदेश पत्रक

मामला क्रमांक G.A. 1856/96 सन् ~~200~~

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Ram Vriksha (PW-2) is the person who witnessed the crime in question and his evidence inspires confidence. Learned counsel for the appellant argued that in para 4 of his examination, Ram Vriksha (PW-2) has stated that the place of occurrence was at a distance of four furlongs from his house. Therefore, in view of this evidence it was not possible for this witness to witness the crime in question.

But, at the end of the evidence of this witness {Ram Vriksha (PW-2)} the Court had specifically in order to clear the doubt put a question to ascertain the distance of place of occurrence from his house, then this witness has stated that the distance of the place of occurrence from his house was like the distance of road from the Court. Thereafter, the Court noted down that the distance between the Court and the road is 150 ft. It is common knowledge that a person working on a roof of the house can witness the incident happening at a distance of 150 ft., as the incident is said to have happened at 4.30 p.m. during the day light. Therefore, we do not find any substance in the argument of learned counsel for the appellant.

For the foregoing reasons, we are of the considered opinion that the finding of the trial Court regarding involvement of the accused in the crime in question does not suffer from any illegality or infirmity.

As per the evidence of Dr. Arvind Kumar Bhatt (PW-15), there were seven injuries viz., 5 incised wounds & two stab wounds, on the body of Singaro Bai and the accused assaulted the deceased with axe on vital part of the organ.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Therefore, intention of the accused to commit the murder of Singaro Bai is also established.

For the foregoing discussion, we are of the opinion that this appeal is devoid of merit, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

Soma

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